KHOO CHENG & ORS

v.

PENTADBIR TANAH MUAR

HIGH COURT MALAYA, MUAR
JEFFREY TAN J
[SUIT NO: 25-35-2005]
24 APRIL 2006

LAND LAW: *Forfeiture - Validity - Forfeiture for non-payment of quit rent - Notice of demand in Form 6A - Notice not served on administrator or beneficiary of estate - Whether service of notice bad in law - Whether forfeiture procedure flawed - Whether forfeiture a nullity - National Land Code, ss. 97, 100, 130, 418, 433*

This was an application by the plaintiffs, the administrators of the estate of Gan Cheng Leong, deceased, to set aside the order of the defendant forfeiting the deceased's land ('the said land') for non-payment of quit rent pursuant to ss. 97 and 100 of the National Land Code ('NLC'). At the trial, evidence was *inter alia* adduced that the defendant, upon the cognizance that quit rent amounting to RM571 had remained in arrears in respect of the said land, issued a notice in Form 6A demanding payment of the same. The Form 6A notice, however, was not issued to any administrator or beneficiary of the estate of the deceased but to an outsider by the name of Lim Pong Geok, and further, was addressed to 45-G, Jalan Salleh, Muar and not to the deceased's last known address at 22, Jalan Bentayan, Muar. It was also evident that the Land Administrator, after having declared the said land forfeit to the State Authority and having published in the Gazette the notice of forfeiture in Form 8A, did not register any memorial thereof on the register document of title as mandated by s. 433 NLC. Before the learned judge, the plaintiffs argued that the forfeiture was invalid and null and void, as service of the Form 6A notice was bad in law and contravened s. 97(1) NLC. It was further argued that, contrary to the defendant's contention, the three months period for appeal under s. 418 NLC had not lapsed, since time ought to run from the date of communication of the forfeiture to the plaintiffs, and not otherwise.

Held (allowing application and setting aside order of forfeiture):

(1) Forfeiture of land for non-payment of rent must comply with the mandatory requirements in the NLC. Consequently, there must be: (i) service of a notice of demand in Form 6A (s. 97(1)); (ii) endorsement of such service on the register document of title (s. 97(2)); (iii) an order declaring the land forfeit to the State Authority (s. 100); (iv) publication of the notification of forfeiture in Form 8A in the Gazette (s. 130(1)); (v) publication of copies of the Form 8A in accordance with the provisions of s. 433 (s. 130(2)); and (vi) registration of a memorial of the publication of copies of the Form 8A on the register document of title (s. 130(2)). Further, and as was said by the Federal Court in *Pow Hing & Anor v. Registrar of Titles, Malacca*, 'there should also be a separate order previously made under s. 100 NLC distinct from the notification in Form 8A'. (paras 12 & 13)

(2) With respect, the period of three months to appeal only begins on the date on which the decision is communicated. In the instant case, it did not appear that forfeiture had been brought home to the plaintiffs. Rather, from the undisputed facts, it was made out that forfeiture had been made contrary to the provisions of ss. 97, 100, 130 and 433 NLC. (paras 16)

(3) The failure to comply with the legal requirements was almost total, considering that: (i) Form 6A was served on a total stranger when ss. 97(1) and 431(1)(b) required that it be served on the proprietor of the land or to his servant or an adult member of his family; (ii) the note of service of Form 6A was only endorsed on the register document of title on 18 June 2003 after the order of forfeiture on 12 March 2003, when s. 97(2) required that it be endorsed after service of the Form 6A notice and not after the order of forfeiture; and (iii) there was no order made pursuant to s. 100 NLC, be it in the form of 'a simple order in terms of the section on default by the end of the specified period declaring the land forfeit to the State Authority' or 'a minute to this effect in the relevant file' as distinct from the notification of forfeiture in Form 8A NLC. This aside, the particulars of the relevant lot were not at all stated in the Form 8A and the Gazette, with the result

that the publication of the Form 8A in the Gazette could not have communicated the fact of the forfeiture to the deceased. The forfeiture, consequently, was not communicated to the plaintiffs, be it in the Form 8A, by the Gazette or by the publication of copies of the Form 8A, and time to appeal, therefore, could not have lapsed. (paras 16 & 17)

(4) Service is a fundamental feature of the requirements, and therefore non-service of the Form 6A notice is ground enough to set aside the forfeiture. In any case, the entire forfeiture procedure adopted herein was flawed. The order of forfeiture was hence a nullity and the same is set aside with costs to the plaintiffs. (paras 19 & 20)

[Order accordingly.]

Case(s) referred to:
Pow Hing & Anor v. Registrar of Titles, Malacca [1981] 1 MLJ 155 ***(refd)***

Legislation referred to:
National Land Code, ss. 97(1), (2), 100, 131, 130(1), (2), 380, 418, 431(1)(b), 433

For the applicant - Wong Kim Fatt; M/s Gulam & Wong
For the respondent - Mohd Firdaus Jamaluddin; A-G's Chambers

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Jeffrey Tan J:

[1] This is a motion (encl. 2) by the administrators of the estate of Gan Cheng Leong (deceased) to set aside the order of the defendant declaring the forfeiture of land held under HS (D) 2326 for Lot TLO 2082, Bandar Maharani, Daerah Muar (hereinafter referred to as the said land) for non-payment of quit rent in the sum of RM571.

[2] In his affidavit (encl. 3) supporting encl. 2, the 2nd plaintiff affirmed as follows. The deceased died intestate on 26 November 1972. The said land and shophouse erected thereon – 18, Jalan Salleh, Muar – were at all times registered in the name of the deceased and were the property of the estate. On 25 May 2005,

whilst he was at the Muar land office to pay the rent for the said land, he learnt that he would not be allowed to tender the rent for reason that the said land had been forfeited to the State Authority, and that the notice of demand in Form 6A (see encl. 7 exh. EF2) had been received by one Lim Pong Geok on 25 May 2002 at 45G, Jalan Salleh, Muar. On 25 May 2005, he informed the defendant that Lim Pong Geok had not brought the Form 6A to his notice. The defendant had not served the Form 6A on him (the estate). The said Lim Pong Geok was an outsider who was not any administrator or beneficiary of the estate of the deceased. If he were served with the Form 6A, he would have paid the rent of RM571, as it was a paltry sum in comparison to the value of the said land which was about RM665,000. Service of Form 6A on Lim Pong Geok, and forfeiture, were invalid, and null and void. His search of the document of title revealed that the Form 6A was served on 18 June 2003, and that the Notice of Reversion to the State in Form 8A was registered on 18 June 2003.

[3] In his affidavit (encl. 7) the defendant disclosed as follows. Form 6A which was issued on 26 April 2002, was addressed to the deceased at his last known address, namely, 45-G, Jalan Salleh, Muar. Form 6A was served on 25 May 2002. The demise of the deceased was not brought to the notice of the respondent. The rent in arrears was not tendered within the three months specified in Form 6A. By order dated 12 March 2003, the respondent declared the said land forfeit to the State Authority. On 12 March 2003, the respondent issued a Notice of Reversion (of the said said land) to the State (Form 8A). The respondent affixed the Form 8A at 5 different places (see encl. 7 exh. EF5). Forfeiture was published in the Gazette on 27 March 2003 (see encl. 7 exh. EF6). All particulars of the said land were correctly stated in the Gazette, save for a 'minor' mistake on the particulars of the lot; it was stated as TLO 2326 instead of TLO 2082. That mistake would not affect the validity of the notification in the gazette. A memorial of the Form 6A and Form 8A was endorsed on the document of title on 18 June 2003. There was a mistake in that memorial; the date of service of the Form 6A was endorsed as 18 June 2002 instead of 25 May 2002. By letter dated 25 May 2005 (see encl. 3 exh. GHC1), the plaintiffs admitted that the forfeiture was due to their failure to pay the rent. Given that admission, the plaintiffs are estopped from challenging the forfeiture. Typographical errors would not adversely affect the validity of the forfeiture procedure.

[4] In his affidavit-in-reply (encl. 9), the 2nd plaintiff contended that the last known address of the deceased was 22, Jalan Bentayan, Muar and not 45-G, Jalan Salleh, Muar, that service on Lim Pong Geok was bad and invalid in law, that the address of the shophouse on the said land was 18, Jalan Salleh and not 45-G, Jalan Salleh, that the defendant had not complied with s. 97(2) of the National Land Code 1965 (all sections cited hereinafter are in relation to the National Land Code 1965), that both Form 8A and notification in the Gazette were bad in law and null and void, that the respondent had not complied with s. 130, that there was no memorial of the date of service of the said Form 6A, and that the doctrine of estoppel had no application.

[5] In his written submission, Mr. Wong Kim Fatt for the plaintiffs submitted that service of the Form 6A on Lim Pong Geok was bad and void in law and that as a result the forfeiture was null and void, that the three months period to appeal under s. 418 should run from the date of communication of the reply of the respondent to the plaintiffs' letter dated 25 May 2005. In his oral submission, Mr. Wong appended that it was an uncontroverted fact that the Form 6A was served on a 'stranger' and that there was a failure to comply with s. 97.

[6] Mr. Mohd Firdaus bin Jamaluddin for the defendant first repeated the point that the plaintiffs were estopped from challenging the forfeiture, and then submitted as follows. Forfeiture which took place on 12 March 2003 was gazetted on 27 March 2002, and time to appeal under s. 418 had lapsed. Despite the fact that they had been administrators for more than two years, the plaintiffs had not taken any steps to register themselves on the document of title. Notice would have been given to the plaintiffs, if they were registered on the document of title. Service of the Form 6A was effected by registered post (that was not the case), a mode of service provided by s. 431(1)(b). Section 97 had been complied. There was the required memorial on the document of title, and any error thereto could be corrected by s. 380. Forms 6A and 8A are different forms, and defect in one will not affect the other.

[7] Mr. Wong replied that the particulars of the land lot were wrongly stated in both Form 8A and Gazette, that in the corollary there was no notice or proper notice, and that there was a failure to comply with s. 433, to which Mr. Firduas answered that the Form 8A was affixed on the said land, and that it was only a case of an irregularity.

[8] Notwithstanding those arguments, it was not disputed that at the material time the rent payable in respect of the said land was in arrears, in the sum of RM571. Section 97(1) provides that "where any rent payable in respect of any alienated land is in arrears, the Land Administrator may cause to be served on the proprietor thereof a notice of demand in Form 6A". When service has been effected, s. 97(2) provides that "a note of the service of ... such notice shall be endorsed, by or at the instance of the Land Administrator on the register document of title to the land to which the notice relates". The sum demanded under s. 97 may be paid within the time specified in the notice of demand. But "if at the end of that period the whole of that sum has not been tendered to (Land Administrator), the (Land Administrator) shall thereupon by order declare the land forfeit to the State Authority, and the provisions of Part Eight shall have effect with respect thereto accordingly" (s. 100).

[9] Part Eight states that "as soon as may be after the making of an order under s. 100 ... that is to say, an order declaring the land forfeit to the State Authority for non-payment of rent ... the Land Administrator shall publish in the Gazette a notification of forfeiture in Form 8A, and upon such publication, the forfeiture shall take effect as mentioned in s. 131" (s. 130(1)). Section 130(2) further states that "copies of any notification published ... shall be published in accordance with s. 433, and the Land Administrator shall, as soon as may be after the notification is published, register or cause to be registered a memorial thereof upon the register document of title to the land in question".

[10] In turn, s. 433 provides that "any provision requiring a copy of a notice or notification affecting land to be published in accordance with the provisions of this section shall be construed as requiring a copy of the notice or notification to be:

(a) affixed in a conspicuous position:

(i) on the land and on the penghulu's office or balai in the area in which the land is situated; and

(ii) in that area, on such court-houses and mosques (if any) and in such markets and other public places (if any) as the (State Director) thinks fit; and

(b) where the State Authority considers that publication in a newspaper is desirable, published in such newspapers circulating in the State as the (State Director) thinks fit.

[11] In relation to service in general of notices which includes any notification, instrument, and or other document on any person or body, s. 431 provides that a "notice may be served on a person or body for the purposes of this Act:

(a) by delivering the notice to the person; or

(b) by delivering the notice:

(i) at the person's usual or last known place of abode or business to his servant or to an adult member of his family; or

(ii) at the body's registered office or usual or last known place of business to its servant or agent; or

(c) by leaving the notice in a cover addressed to the person or body:

(i) at the person's usual or last known abode or place of business; or

(ii) at the body's registered office or usual or last known place of business; or

(d) by sending the notice by pre-paid registered post to the person or body at an address of service given in pursuance of any provision of this Act or, where no such address has been given:

(i) at the person's usual or last known abode or place of business; or

(ii) at the body's registered office or usual or last known place of business; or

(e) by substituted service in accordance with section 432.

(2) A notice served by pre-paid registered post under paragraph (d) of subsection (1) shall be deemed to have been served at the time when the letter containing the notice would be delivered in the ordinary course of post; and it shall be sufficient proof of service that the letter was properly addressed in accordance with that paragraph and placed in the post:

Provided that, where the letter is returned through the post undelivered, the notice shall not be deemed to have been served.

[12] Forfeiture of land for non-payment of rent must comply with what are mandatory requirements (see *Pow Hing & Anor v. Registrar of Titles, Malacca* [1981] 1 MLJ 155, 158, where it was held by the Federal Court that conformance of s. 97(2) is mandatory and non-compliance therewith would vitiate any subsequent forfeiture effected in the event of failure by the registered proprietor to comply with the notice of demand). And in that order, the mandatory requirements are (i) the service of a notice of demand in Form 6A (s. 97(1)), (ii) a note or endorsement of the service of the Form 6A on the register document of title (s. 97(2)), (iii) an order declaring the land forfeit to the State Authority (s. 100), (iv) the publication of the notification of forfeiture in Form 8A in the Gazette (s. 130(1)), (v) the publication of copies of the Form 8A in accordance with the provisions of s. 433 (s. 130(2), and (vi) the registration of a memorial of the publication of copies of the Form 8A on the register document of title (s. 130(2)).

[13] In *Pow Hing*, the Federal Court held that there is one other requirement, namely, an order previously made under s. 100 as distinct from the notification of forfeiture in Form 8A:

> The question next arises as to whether there was compliance with the provisions of section 100. That section stipulates that if by the end of the specified period the whole sum demanded by the notice has not been tendered the Collector shall thereupon by order declare the land forfeit to the State Authority. The Collector says in his affidavit that he did by order so declare on June 21, 1979 but the order exhibited thereto is Form 8A which is a notification of the forfeiture under section 130(1) for publication in the Gazette. Section 130(1) provides for such publication of the notification of forfeiture in Form 8A as soon as may be after the making of an order under section 100 declaring the land forfeit to the State Authority. There should therefore, in our view, be a separate order previously made under section 100 distinct from the notification of forfeiture in Form 8A.

[14] There is no form provided for an order under s. 100, but the Federal Court in *Pow Hing* held (see p. 159) that the s. 100 order can be either "a simple order in the terms of the section on default by the end of the specified period declaring the land forfeit to the State Authority or ... a minute to this effect in the relevant file".

[15] Pertinently, the Federal Court in *Pow Hing* further held that: A

> Section 134(1) enacts that the validity of forfeiture shall not be challenged in any court except by means of or in proceedings consequent upon an appeal under section 418 against the order of the Collector under section 100. Subsection (2) of section 134 provides that no order of the Collector under section 100 shall be set aside by any court except upon the grounds of its having been made contrary to the provisions of the Code or of there having been a failure on the part of the Collector to comply with the requirements of any such provision. It then goes on to provide that no such order shall be set aside by reason only of any irregularity in the form or service of any notice under sections 97 and 98 unless in the opinion of the court the irregularity was of a significant nature. It is clear that this subsection specifically provides that irregularity in the form or service of a notice is not by itself a sufficient ground for setting aside the order of forfeiture unless the court considers it otherwise; it says nothing about and makes no exception with respect to the failure to make the endorsement under section 97(2) which clearly comes within its opening provisions with regard to the grounds for setting aside an order of forfeiture as having been made contrary to the provisions of the Code or of there having been a failure on the part of the Collector to comply with the requirements of any such provision.

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[16] In relation to that appeal, s. 418 provides that "any person or body aggrieved by any decision ... may at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the court". It was submitted by Mr. Mohd Firdaus that forfeiture which took place on 12 March 2003 was gazetted on 27 March 2002, and that time to appeal had lapsed. But with respect, the period of three months to appeal only begins on the date on which the decision is communicated. And in the instant case, it did not appear that forfeiture had been brought home to the plaintiffs. Rather, from the undisputed facts, it was made out that forfeiture had been made contrary to the provisions of ss. 97, 100, 130, and 433 and or that there had been a failure on the part of the defendant to comply with the requirements of those provisions. The failure was almost total. Form 6A was served on a stranger, when it was the requirement of s. 97(1) that it must be served on the proprietor of the said land, "by delivering the notice to the (proprietor) or by delivering the notice at the (proprietor's) usual or last known

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A place of abode or business to his servant or to an adult member of his family ..." (see s. 431(1)(b)). The note of service of the Form 6A was endorsed on 18 June 2003, ie after the order of forfeiture dated 12 March 2003, when it was the requirement of s. 97(2) that after service (not after the order of forfeiture) a note B of the service of Form 6A shall be endorsed on the register document of title. Yet that belated note of service of the Form 6A on the document of title further underlined that the entire forfeiture process was fraught with serious errors on most material particulars. Form 6A was served on 25 May 2002, *albeit* on Lim C Pong Geok at 45G, Jalan Salleh, Muar (see encl. 7 exh. EF2). The note of the service of Form 6A should state the date of service as 25 May 2002. But it was not stated in the note of service on the register document of title that Form 6A was served on 25 February 2003. If at all, it was erroneously stated in the D note of service on the register document of title that Form 6A was served on 18 June 2003.

[17] One requirement was totally overlooked; there was no s. 100 order, be it in the form of "a simple order in the terms of the E section on default by the end of the specified period declaring the land forfeit to the State Authority" or "a minute to this effect in the relevant file", as distinct from the notification of forfeiture in Form 8A. Even on the straightforward matter of the Form 8A, the defendant could not get it right, as the particulars of the said lot F were not stated at all in the Form 8A and in the Gazatte. Now given that the particulars of the said lot were not stated or correctly stated, the publication of the Form 8A in the Gazette could not have communicated the fact of forfeiture of his land to the deceased. The publication of copies of the Form 8A which G was not in accordance with s. 433 could also not have communicated the forfeiture to the plaintiffs. Section 433 provides that "any provision of this Act, requiring a copy of a notice or notification affecting the land to be published in accordance with the provisions of this section shall be construed as requiring a H copy of the notice or notification to be (a) affixed in a conspicuous position on the land and on the penghulu's office or balai in the area in which the land is situated; and in that area, on such court-houses and mosques (if any) and in such markets and other public places (if any) as the State Director thinks fit" Regardless I of whatever other places to be affixed, a copy of the said Form 8A was required to be affixed in a conspicuous position on the said land, namely TLO 2082. But that was not done, as the Form

8A was affixed by the defendant's notice server (Md Supian bin Samsi) "di sekitar TLO berkenaan", which "TLO berkenaan" was evidently not TLO 2082 (see encl. 7 exh. EF5). Suffice it to say that forfeiture had not been communicated to the plaintiffs, be it by the Form 8A, by the Gazette, and or by the publication of copies of the Form 8A, and time to appeal could not have lapsed.

[18] One other requirement was also totally overlooked. Section 130(2) states that "copies of any notification under sub-section (1) shall be published in accordance with the provisions of s. 433, and the Land Administrator shall as soon as may be after the notification is published, register or cause to be registered a memorial thereof upon the register document of title to the land in question". But that was not done. Admittedly, there was a memorial of the publication of the Form 8A in the Gazette on the register document of title (see encl. 3 exh. GHC3). But there was no memorial of the publication of copies of that Form 8A in accordance with the provisions of s. 433 on the register document of title.

[19] It was so plain that there was a failure on the part of the defendant to comply with legal requirements. For a start, the defendant had not even served the Form 6A on the proprietor. The delivery of the Form 6A at the asserted last known address of the deceased, if indeed that were the last known address of the deceased, was not good service. Section 431(1)(b) clearly stated that the delivery of any notice at the proprietor's last known place of business or abode shall be "to his servant or to an adult member of his family". Service was fundamental, and non service of the Form 6A was ground enough to set aside the forfeiture. But if non service of the Form 6A were not ground enough, then the further failure of the defendant (i) to register a note of the service of the Form 6A on the register document of title, (ii) to make a s. 100 order, be it in the form of "a simple order in the terms of the section on default by the end of the specified period declaring the land forfeit to the State Authority" or "a minute to this effect in the relevant file", as distinct from the notification of forfeiture in Form 8A, (iii) to publish copies of the Form 8A in accordance with the provisions of s. 433, and (iv) to register a memorial of the publication of copies of the Form 8A on the register document of title, all mandatory requirements of the provisions, was surely more than solid ground to set aside the forfeiture.

A **[20]** This was not a case of an irregularity in the form or service of any notice under Chapter 2 of Part Six. On the contrary, this was a case of forfeiture that had been made contrary to provisions and of failure on the part of the defendant to comply with legal requirements. The entire forfeiture procedure was flawed. The
B order of forfeiture was a nullity that could not be defended. For these reasons, it is hereby ordered that the order of forfeiture be set aside, with costs to the plaintiffs.

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